

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT AND RECOMMENDATION**ON CONSISTENCY CERTIFICATION**Consistency Certification No. **CC-072-05**

Staff: MPD-SF

File Date: 6/2/2005

3 Months: 9/2/2005

6 Months: 12/2/2005

Commission Meeting: 9/14/2005

APPLICANT: North County Transit District**DEVELOPMENT****LOCATION:** San Onofre Creek, Marine Corps Base Camp Pendleton,
San Diego County (Exhibits 1-2)**DEVELOPMENT****DESCRIPTION:** Emergency repairs, Pier 5, Bridge 208.6, San Onofre Creek
(Exhibits 3-8)**SUBSTANTIVE FILE**
DOCUMENTS:

See page 9.

EXECUTIVE SUMMARY

The North County Transit District (NCTD) has submitted an after-the-fact consistency certification for emergency repairs to the Bridge 208.6 pier in San Onofre Creek in northern Marine Corps Base Camp Pendleton. The repairs were needed to stabilize the pier and enable the rail line to continue operating. Storms in December 2004-January 2005 damaged the footings at the base of the pier. The repair work consisted of excavating loose material and debris trapped at the base of the pier, installing temporary sheet pile walls around the pier and dewatering the creek in the immediate pier area, replacing concrete damaged during the storms, adding riprap around 3 sides of the pier to prevent future erosion, installation of temporary work areas, and temporary (non-native) vegetation removal (25 linear ft. of tules on the south side of the access road under the bridge). Revegetation will be with native species.

The project is needed to maintain rail access across San Onofre Creek and is consistent with the public access policies of the Coastal Act (Sections 30210-30212 and 30252). The project is also consistent with the air quality policy (Section 30253) promoting energy consumption-reduction strategies (e.g., reducing automobile vehicle miles traveled).

The project triggers, and is consistent with, the 3-part test of Section 30233(a) of the Coastal Act. The project is an allowable use as an incidental public service, is the least damaging feasible alternative, and includes avoidance, monitoring, and mitigation measures where appropriate. Working with the National Marine Fisheries Service, U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the Regional Water Quality Control Board, and the Commission staff, NCTD included minimization and monitoring measures to assure the protection of wetlands and environmentally sensitive habitat. Removal of non-native vegetation along the access road under the bridge occurred during non-sensitive periods, and while tidewater gobies occur in the creek, NCTD undertook measures to protect this species. Post construction monitoring has not documented any adverse effects to tidewater gobies or any other sensitive species. The project included Best Management Practices (BMPs) to minimize water quality impacts. The project is consistent with the wetlands, environmentally sensitive habitat, and water quality policies (Sections 30233, 30240, 30231 and 30232) of the Coastal Act.

I. STAFF SUMMARY AND RECOMMENDATION:

A. Project Description. The North County Transit District (NCTD) has submitted an after-the-fact consistency certification for emergency repairs to the Bridge 208.6 pier in San Onofre Creek in northern Marine Corps Base Camp Pendleton. The repairs were needed to stabilize the pier and enable the rail line to continue operating. Storms in December 2004-January 2005 damaged the footings at the base of the pier. The repair work consisted of excavating loose material and debris trapped at the base of the pier, installing temporary sheet pile walls around the pier and dewatering the creek in the immediate pier area, replacing concrete damaged during the storms, adding riprap around 3 sides of the pier to prevent future erosion, installation of temporary work areas, and temporary (non-native) vegetation removal (25 linear ft. of tules on the south side of the access road under the bridge (Exhibit 5), to be revegetated with native species).

B. Procedures – Permitting Issue. The project triggered federal consistency review because it needed U.S. Army Corps of Engineers and U.S. Marine Corps permission. However the Commission also believes it is subject to the permitting requirements of the Coastal Act, as a private (i.e., non-federal) activity on federal land, based on the U.S. Supreme Court’s “Granite Rock decision” (CCC v. Granite Rock Co.)(1986)(480 U.S. 572). The NCTD disagrees with this position; however the Commission is willing to concur with this consistency certification because it can be found consistent with Chapter 3 of the Coastal Act. Any permit review would involve the same substantive standard of review (i.e., Chapter 3). The Commission notes that the NCTD has applied for a number of permits for its “double tracking” activities in other sections of the coast, including, CDP’s No. 6-01-64 (NCTD - Balboa Avenue), 6-01-108 (NCTD - Tecolote

Creek), 6-93-60 (NCTD - Del Mar), 6-94-207 (NCTD - Solana Beach), 6-93-106 (NCTD – Carlsbad), and 6-93-105 (NCTD - Camp Pendleton).

C. Applicant’s Consistency Certification. The North County Transit District certifies that the proposed activity complies with the federally approved California Coastal Management Program and will be conducted in a manner consistent with such program.

II. Staff Recommendation and Motion. The staff recommends that the Commission adopt the following motion:

MOTION: I move that the Commission **concur** with the North County Transit District’s consistency certification CC-072-05 that the project described therein is consistent with the enforceable policies of the California Coastal Management Program (CCMP).

Staff Recommendation:

The staff recommends a **YES** vote on the motion. Passage of this motion will result in a concurrence with the certification and adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is required to pass the motion.

Resolution to Concur with Consistency Certification:

The Commission hereby **concurs** with the consistency certification by the North County Transit District, on the grounds that the project described therein is consistent with the enforceable policies of the CCMP.

III. Findings and Declarations.

The Commission finds and declares as follows:

A. Public Access and Recreation. Sections 30210-30212 of the Coastal Act provide for maximum public access to the shoreline, consistent with, among other things, public safety, military security needs, and fragile habitat protection. Section 30252 encourages mass transit and identifies reducing traffic congestion as a coastal access benefit. These sections provide, in relevant part, that:

Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access , which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212(a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,....

Section 30252: The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service....

The proposed repairs are needed to maintain access through the rail corridor between Los Angeles and San Diego. NCTD states:

Section 30210. The emergency repair project did not interfere with existing public access to coastal areas and recreational opportunities. The project involves repair of an existing railroad bridge within an existing designated railroad right-of-way, which is not specifically authorized or utilized for public access or public recreational opportunities. Historically, unauthorized use of NCTD's railroad right-of-way has occurred by members of the public to gain access to the Pacific Ocean.

The emergency repair project conforms with the public access objectives of the California Coastal Act because it does not propose any change to existing public coastal accessways. There are no authorized coastal accessways located within the project area. The purpose of the emergency repair project is to repair Pier 5 of the existing railroad bridge in order to restore structural and operational capacity for trains passing over San Onofre Creek, and to protect public and environmental safety. Debris was also cleared from the base of Pier 4.

Additionally, the emergency repair project did not directly result in a noticeable increase in use of natural resource areas, recreational facilities, or public services in the coastal zone. The project did not result in any additional operations staff, nor did it require large numbers of construction staff for significant periods of time. The project neither facilitated nor restricted local access.

The main access point for construction vehicles and equipment was on the north side of San Onofre Creek. Access to the project area from Interstate 5 was from Christianitos Road. After exiting Christianitos Road, an existing access road that parallels Old Highway 101 was used to access Railroad Bridge 208.6. The construction access route had been identified with the primary intent of minimizing impacts to sensitive coastal resources, as well as not affecting public access to coastal areas.

Construction access and staging was located within the NCTD ROW, primarily on the existing access road located north of Pier 5.

...

Section 30214. The emergency repair project conformed with the public access objectives of the California Coastal Act because it did not propose any change to existing public coastal access ways. There were no authorized coastal access ways located within the project area. The emergency repair project was anticipated to be beneficial to public coastal access by restoring the structural and operational capacity for trains passing over San Onofre Creek, and to protect public and environmental safety.

In reviewing a number of recent NCTD involving mass transit repairs and improvements in San Diego County, the Commission has considered traffic congestion to constitute a constraint on public recreation and access to the shoreline. Increased traffic on highways such as I-5, which is a major coastal access thoroughfare, reduces the ability of the public to attain access to coastal recreation areas and makes it more difficult for the public to get to the beach. Section 30252 of the Coastal Act recognizes the importance of improving public access through, among other things, improvements in public transit. The project has not temporarily affected any existing public access, and the repair work was needed to maintain access along the coast and along the rail corridor, thereby helping to reduce highway congestion and its adverse effects on public access. The Commission therefore finds the proposed project consistent with the public access and recreation policies (including Sections 30210-30212 and 30252) of the Coastal Act.

B. Wetlands and Environmentally Sensitive Habitat Areas. Section 30233 of the Coastal Act provides that:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following: ...

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines. ...

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary.

Section 30240 provides:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

NCTD states:

Section 30230. The emergency repair project was located in the area of San Onofre Creek near the outlet to the Pacific Ocean. No known sensitive marine resources were located in the area of construction activity associated with the lagoon. Prior to project construction, the National Marine Fisheries Service (NMFS) was contacted and NMFS determined (2/8/05) that there were no issues that would prevent project construction from beginning.

The project temporarily impacted various upland vegetation types and Army Corps of Engineers (ACOE) jurisdictional non-wetland waters. Please see discussion in Attachment A.

The United States Fish & Wildlife Service (USFWS), Carlsbad Field Office was contacted prior to project construction and the USFWS determined that the emergency bridge repair work had the potential to adversely impact the Tidewater Goby. The USFWS directed NCTD to implement the Tidewater Goby conservation measures that are currently part of the Draft Biological Opinion being prepared by the USFWS for NCTD's future double track construction and ongoing operations and maintenance within the action area (Orange/San Diego County Line to Oceanside), as well as the O'Neil to Flores Second Track Project, Santa Margarita Bridge Replacement and Second Track Project, and the Oceanside Passing Track Project.

Section 30233. (a) The emergency repair project did not temporarily or permanently impact tidally influenced coastal areas. No federal or state jurisdictional wetlands were located within the project site.

The emergency repair project did not affect existing coastal access within the project area or in the vicinity of the project area.

This project is an incidental public service as outlined in Section 30233 (a)(5). The project has been designed to fulfill this purpose in the least environmentally

damaging way possible. As such, the emergency repair project is consistent with Sections 30230, 30231, 30232, and 30233 of the California Coastal Act.

...

During repair of Pier 5, approximately 50 cubic yards of soil/riprap was removed from around Pier 5. Upon completion of the concrete footing for Pier 5, the soil/riprap was replaced within the San Onofre Creek from where it was removed and an additional 32 cubic yards of riprap was placed around Pier 5 to prevent future scouring.

...

During a portion of the emergency repair construction work, a berm was built in San Onofre Creek to prevent rushing water from entering the excavation area around Pier 5. Due to the low water visibility within the project area, water was bucketed with the excavator. The water was dumped between the berm and the sediment boom and allowed to dissipate through the boom. The turbidity was minor and cleared within an hour of bucketing. The berm was removed a few days after it was created.

The project includes fill in San Onofre Creek and thus triggers the 3-part (allowable use, alternatives, and mitigation tests) of Section 30233(a) of the Coastal Act. As a repair to an existing fill structure in the creek, the project meets the first of these tests because it qualifies as an “incidental public service.” The Commission has considered repairs to and minor expansions of existing roads, railroad lines, and airport runways in certain situations, including pilings for bridges, to qualify as “incidental public service purposes,” and thus allowable under Section 30233(a)(5), but only where no other feasible less damaging alternative exists and the activity is necessary to maintain existing traffic capacity. The pier repair is the least damaging alternative (see below) and is needed to maintain existing rail capacity.

The Court of Appeal has recognized this definition of incidental public service as a permissible interpretation of the Coastal Act. In the case of *Bolsa Chica Land Trust et al., v. The Superior Court of San Diego County* (1999) 71 Cal.App.4th 493, 517, the court found that:

... we accept Commission's interpretation of sections 30233 and 30240... In particular we note that under Commission's interpretation, incidental public services are limited to temporary disruptions and do not usually include permanent roadway expansions. Roadway expansions are permitted only when no other alternative exists and the expansion is necessary to maintain existing traffic capacity.

Concerning the alternatives test, NCTD coordinated with the Commission staff, as well as the National Marine Fisheries Service, U.S. Fish and Wildlife Service, the Regional Water Quality Control Board, and the U.S. Army Corps of Engineers, prior to commencing the emergency repair, to assure that all feasible habitat-avoidance measures would be included. The primary species of concern was the tidewater goby, and NCTD installed block netting around the pier,

and a floating silt net just inside the block netting. Prior to construction, NCTD caught and relocated gobies found within the netting; no gobies were observed once the project commenced. A biologist was present during construction and oversaw implementation of Best Management Practices. Post-construction monitoring (Exhibits 9-10) has not documented any adverse effects to tidewater gobies or any other sensitive species. Revegetation of disturbed areas will occur using native species, as described in Exhibit 9. With these measures, the Commission finds the project qualifies as the least environmentally damaging feasible alternative. The “no project” alternative would lead to failure of the bridge and result in extensive damage to the creek and its habitat.

Concerning mitigation, the footprint of the pier is the same as the previously-existing pier, and the additional supporting rip-rap (32 cu. yds., involving 0.006 acres in area.) was placed below the creek bottom and covered with the temporarily excavated soil from the existing creek, in a manner restoring the streambed to its original condition. The Commission therefore finds that the wetland impacts were temporary, and that no further wetland mitigation is required under Section 30233.

The Commission agrees with NCTD that with the measures incorporated into the project described above, combined with the water quality measures (described in the following section of this report), the project was designed to prevent impacts which would significantly degrade any nearby environmentally sensitive habitat areas, is compatible with the continuance of those environmentally sensitive habitat areas, and avoids permanent adverse effects on wetlands. The Commission therefore finds the project consistent with the requirements of Sections 30233 and 30240 of the Coastal Act.

C. Water Quality. Section 30231 of the Coastal Act provides:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 provides:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

NCTD states:

Section 30231. The potential impacts to water quality were limited to the construction phase of the project only. Pollutants of concern during construction activities were erosion and sedimentation, and the potential for hazardous materials spill or leakage from construction vehicles.

Attachment A [Exhibit 9] provides a detailed discussion of the project's construction and post-construction best management practices (BMPs).

Section 30232. Contractor operations did not generate any unusual or significant amounts of hazardous wastes. Hazardous materials temporarily held on-site were stored in secure areas and in properly placarded containers. Potential hazardous materials, that were present on-site during, construction of the project, are those generally associated with the operation and maintenance of vehicles and equipment. No hazardous materials were stored within 100 feet of sensitive areas (i.e., San Onofre Creek).

On March 30, 2005, a hydraulic hose on the large excavator was severed and approximately 30 gallons of fluid spilled onto the existing access road north of the San Onofre Creek. The fluid was immediately contained in a large container and spilled fluid was surrounded with oil absorbent booms. Contaminated soil and used absorbent materials were placed into a .55-gallon drum and removed from the site.

NCTD included commitments for Best Management Practices (described in Exhibit 9), as well as the habitat protection measures described in the previous section of this report. With these measures, combined with the Post-Construction monitoring reports (Exhibits 9-10), the Commission finds the project has not caused significant water quality impacts and is consistent with the water quality policies (Sections 30231 and 30232) of the Coastal Act.

IV. Substantive File Documents

1. CC-052-05, NCTD, Replacement of Santa Margarita River Railroad Bridge, Marine Corps Base Camp Pendleton.
2. CC-086-03, NCTD, Second Track, San Onofre Area, Marine Corps Base Camp Pendleton.
3. CC-029-02, NCTD, Oceanside-Escondido Rail Project.
4. Pending NCTD Consistency Certifications CC-048-04 (NCTD, Del Mar Bluffs Stabilization Project).

5. CC-064-99, Metropolitan Transportation Agency, Extension of Light-Rail, City of San Diego.
6. CC-058-02, City of Santa Barbara, modifications to the Santa Barbara Airport.
7. NCTD Coastal Development Permits 6-01-64 (NCTD - Balboa Avenue), 6-01-108 (NCTD - Tecolote Creek), 6-93-60 (NCTD - Del Mar), 6-94-207 (NCTD - Solana Beach), 6-93-106 (NCTD - Carlsbad), and 6-93-105 (NCTD - Camp Pendleton).